

ROBERT R. EISENMAN

IBLA 80-362

Decided September 26, 1980

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claims Big E Nos. 1, 2, and 3 abandoned and void. CA MC 15514 and CA MC 15515.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1977, fails to file an affidavit of assessment work or notice of intention to hold the claim prior to Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

APPEARANCES: Robert R. Eisenman, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Robert R. Eisenman appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated January 29, 1980, holding the Big E Nos. 1, 2, and 3 placer mining claims void for failure to file assessment statements or notices to hold the claims as required by the Federal Land Policy and Management Act of 1976, FLPMA, 43 U.S.C. § 1744 (1976).

The claims involved in this appeal were located August 26, 1978, and filed for recordation with BLM August 31, 1978. Evidence of assessment work for the period September 1, 1978 to September 1, 1979, was filed with the BLM on January 21, 1980. The decision appealed from states that the assessment notice was due in the BLM office prior to December 31, 1979, as required by 43 CFR 3833.2-1.

In his statement of reasons appellant admits he was clearly in error in the late filing, but had been on vacation in late December 1979, and thought that the notice had previously been mailed.

[1] Section 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(b)(1), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). These claims were located after October 21, 1976, in calendar year 1977. Thus, one or the other of the documents had to be filed prior to December 31, 1978, the year following the calendar year in which the claims were located, in order to meet the requirements of the law.

When appellant failed to file timely either an affidavit of assessment work or notice of intention to hold, BLM properly held the claims to have been abandoned and declared them void. Geomet Exploration Inc., 47 IBLA 135 (1980); Northwest Mining & Mercantile, Inc., 46 IBLA 360 (1980); Willene Minnier, 45 IBLA 1 (1980); Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Caurruthers, 38 IBLA 77 (1978); Donald H. Little, 37 IBLA 1 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978). The procedures established by 43 U.S.C. § 1744 (1976) are mandatory and therefore may not be waived. Lo Lo M. Cosby, 46 IBLA 363, 364 (1980); Donald H. Little, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

